WIDE VOICE

January 14, 2019

BY ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 01-92, WC Docket No. 07-135, and WC Docket No. 18-155

Dear Ms. Dortch:

Wide Voice, LLC ("Wide Voice") through counsel submits this letter for the Federal Communications Commission's ("FCC's" or "Commission's") consideration in the above-referenced proceedings.

I. Introduction And Summary

Operation of the *USF/ICC Transformation Order*[1] and its benchmarking provisions has resulted in massive rate reductions and convergence in switched access charges.[2] It also eliminated the ability of access stimulators to benefit from relatively high compensation associated with rural, rate-of-return access rate schedules. With the exception of transport rates in rural areas typically served by Central Equal Access ("CEA") providers, terminating switched access rates have become low and substantially uniform. The attached Audio Conferencing Access Rate Study illustrates how compensation for this high-volume traffic type has changed since the *USF/ICC Transformation Order*.

The Notice of Proposed Rulemaking ("NPRM") in this proceeding makes no mention of this seven year trend towards substantially lower, converged rates. Rather than further the goals of the *USF/ICC Transformation Order*, the NPRM proposals would instead create new rate disparities, punishing and discriminating against local exchange carriers ("LECs") classified as access stimulators and further embolden incumbent operators' attacks on these LECs. Indeed, turning more than 30 years of Commission uniform precedent on its head, so-called "access stimulator" LECs would be required to pay access charges, rather than receive access charges. This 180 degree turn would not only controvert the legal and policy underpinnings of every single

1 *Connect America Fund et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-54, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 at 17904 (2011) ("*USF/ICC Transformation Order*"), aff'd, FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

2 Audio Conferencing Access Rate Study, attached hereto at Exhibit 1 ("Audio Conferencing Rate Study") (demonstrating that access charge rates have fallen by more than 90 percent in some areas under the *USF/ICC Transformation Order*).

410 S. Rampart, Suite 390 Las Vegas, NV 89145 844-844-8444

FCC access charge order ever issued, including the *USF/ICC Transformation Order*, but it would violate the very statutory provisions upon which the Commission purports to rely.[3]

The Commission should adopt no such rules. Instead, Wide Voice suggests that the Commission take the following three actions to further the stated and well-understood rate convergence goals of the *USF/ICC Transformation Order*. First, the Commission should cap at 15 miles transport charges for access stimulators.[4] Doing so would essentially complete the job of establishing access charge rate parity for access stimulating and non-access stimulating LECs. Second, the Commission should find that refusing to pay a properly filed tariffed rate is an unjust and unreasonable practice that violates section 201 of the Communications Act, 47 U.S.C. § 201(b). Doing so would further purposes of the *USF/ICC Transformation Order* by encouraging IXCs to follow the Commission's detailed tariff dispute processes, rather than engage in self-help (effectively paying a rate of $0.00), burdening the courts, and undermining the Commission's tariff system and compensation rules. Third, as carriers continue to ignore the original language in the *USF/ICC Transformation Order* that was recently clarified by the Commission in *Level 3 v. AT&T*, the FCC should state again that the tandem switched transport rate transition relies on the carrier's regulatory classification and only applies to traffic that "***terminates to a price cap LEC end office***."[5]

II. Discussion

A. The NPRM Fails To Acknowledge Or Analyze The Purpose And Results Of The *USF/ICC Transformation Order*

Although it purports to rely on the *USF/ICC Transformation Order*, the NPRM offers no data or factual analysis regarding whether or to what extent the Commission's 2011 rate parity goals have been achieved. The analysis provided in the attached Audio Conferencing Rate Study demonstrates as a matter of fact that the Commission's multi-year rate step down and access stimulation regulations have both reduced switched access charge rates and led to a national convergence of such rates, with the exception of transport charges mostly found in CEA areas, where slight rate disparities and arbitrage opportunities remain.

At the same time it offers no analysis of results, the NPRM does acknowledge that achieving rate parity through benchmarking was the primary goal of the *USF/ICC Transformation Order* with respect to access stimulation. Specifically, the NPRM notes that under the *USF/ICC Transformation Order* a:

> LEC that is engaged in access stimulation is required by [the FCC's] rules to reduce its charges either by adjusting its rates to account for its high traffic volumes (if a rate-of-return LEC) or to reduce its access charges to those of a

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[3] NPRM at ¶36 (citing 47 USC §§ 201(b) and 251(b)(5) and *USF/ICC Transformation Order* ¶¶760-81. The provisions permit the Commission to establish rate uniformity, not rate disparity, which is what would result were the Commission to make access stimulators switched access *purchasers* rather than switched access *providers* even though they are engaging in the same joint provisioning of access services other providers would get paid for.

[4] Wide Voice presently does not charge for transport mileage.

[5] *Level 3 Communications, LLC v. AT&T, Inc. et al.*, Memorandum Opinion and Order, 33 FCC Rcd 2388 ¶11 (2018) ("*Level 3 v. AT&T*") (emphasis added).

price cap LEC with the lowest switched access rates in the state (if a competitive LEC).[6]

Operation of the *USF/ICC Transformation Order* has resulted in massive rate reductions and convergence in switched access charges.[7] It also eliminated the ability of access stimulators to benefit from relatively high compensation associated with rural, rate-of-return access rate schedules. Indeed, with the exception of mileage based transport rates in rural areas typically served by CEA providers, terminating switched access rates have become low and substantially uniform.

The Commission justified the 2011 access stimulation regulations based on the materially higher rate levels that existed in certain areas of the country at that time. By virtue of the multi-year rate step down and the inability of access stimulators to benchmark to rural rates, the rates effective in 2019 are a small fraction of the 2011 rates as the Audio Conferencing Access Rate Study demonstrates. An unjustified amplification of the access stimulation regulations ("first prong" economic reversal and "second prong" direct interconnection) cannot be squared with current rate variations or market conditions. Such an unnecessary rate application reversal would violate every foundational premise of the *USF/ICC Transformation Order* and compensation provisions of the Act.

B. The NPRM Proposals Contradict Rather Than Further The Goals Of The *USF/ICC Transformation Order*

The access stimulation rules were established to identify situations where substantial access rate disparities were being leveraged by high-volume access services and then to remove those disparities and associated distorted incentives through benchmarking to lower priced incumbent LECs ("ILECs"). In stark contrast to the NPRM, nothing in the *USF/ICC Transformation Order* is designed to create an entirely new group of discriminatory compensation policies. The access stimulation "triggers," although imperfect, have been successful in identifying and addressing the initial policy issue – equalizing compensation across LECs and traffic types. Under the NPRM's proposals, however, these triggers are now being "weaponized" to create rate disparities, rather than eliminate rate disparities.

Far from establishing rate uniformity, the NPRM's proposal if adopted would create massive new rate disparities for companies classified as "access stimulators." Indeed, rather than collect switched access charges like all other LECs, access stimulator LECs would now be losing that compensation <u>and</u> be responsible for paying intermediate access provider terminating charges, or paying the cost of direct interconnection and transport to the IXC. Particularly egregious, the proposed compensation policies of the NPRM would only affect specialized LECs, deemed "access stimulators." So long as a LEC does not trip the secondary "triggers," it can share revenue and carry audio conferencing and similar high-volume, one-way traffic; it must manage its business to not do "too much" of this. When coupled with punitive obligations, triggers based on growth or traffic profile favor large, diversified LECs and punish small LECs because they are specialists. Status as a specialist, however, is not a criterion for disparate compensation treatment under sections 201(b) or 251(b)(5) of the Communications Act, the only provisions upon which the Commission seeks to justify the NPRM proposal.

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6 NPRM at ¶5. Reducing charges to a benchmark level creates uniformity and parity. Reversing the compensation flow and putting the cost on the LEC, either in terms of switched access rates or direct interconnection obligations, destroys rate parity and uniformity.

7 *See generally* Audio Conferencing Access Rate Study.

Revenue sharing and service credits are commonplace in the telecommunications market. Telecommunications carriers and their vendors share revenue, provide service credits or bundled pricing for all sorts of services, including equipment, toll free calling, inmate calling, text messaging, and access charges, among others. AT&T even successfully argued to the Commission that its ILEC must be able to charge tandem access fees for calls to its wireless affiliate so that affiliate can remain competitive with Sprint and T-Mobile. This suggests that Sprint and T-Mobile are receiving benefit ("revenue sharing") from their third party tandem partnerships, despite both carriers and their partners publicly claiming otherwise.[8] However, under the NPRM proposals, revenue sharing – or even the *accusation of* revenue sharing – will be remarkably destructive to some providers while other providers will continue to freely engage in revenue sharing and carry the same type of traffic, unscathed. The Commission should not create such discriminatory outcomes that contradict the *USF/ICC Transformation Order*.

The Commission's traffic volume – 100% growth and 3:1 imbalance – are serving to lock up the market with the largest telecommunications providers, harming consumers and competition in the process. Although it is nearly impossible for large incumbent carriers to grow by 100% annually, that is exactly what new market entrants and smaller companies often do. At the same time large carriers are unable to grow by 100%, they also have the traffic diversity to manage their traffic balances to satisfy the 3:1 ratio trigger. The result of these triggers being coupled with punitive obligations is that the new entrants and small competitors are penalized for specialization, ultimately limiting market efficiency.

Instead, large providers are given flexibility and competitive advantage. Because they are able to manage their business to avoid tripping the traffic volume triggers, large providers are empowered to share revenue while avoiding the impact of any new and extreme access stimulation regulations proposed in the NPRM. The practical effect being that large companies are able to protect and extend their market share through sharing revenue, offering service credits, or bundling services with their customers, and it is no surprise, therefore, that it is these large carriers that are supportive of the NPRM. This only leads to an ossified market that locks in market share for big companies by economically precluding companies like Wide Voice from bringing the benefits of competition to the market and to consumers.

In a market where rate parity exists through the Commission's current benchmarking and access stimulation requirements, new interconnection and compensation obligations on companies classified as access stimulators serve only to increase those LECs' costs as compared to other LECs not limited by the access stimulation regulations. Nothing in the Communications Act, however, suggests that the Commission has the authority to place discriminatory compensation and interconnection obligations on a class of carriers because they are specialists in certain types of services.

The opposite is true. The Communications Act requires all carriers to interconnect with one another on rates, terms, and conditions that are just and reasonable. It is neither just nor reasonable to require only a subset of LECs to operate under a unique set of damaging interconnection and compensation rules. As a matter of fundamental fairness, any interconnection or compensation obligations adopted by the Commission must apply equally to all LECs.

[8] AT&T Brief in Support of Answer, *Level 3 v. AT&T*, EB Docket No. 17-227, *Level 3 v. AT&T*, at 28 (filed Oct. 10, 2017).

Lastly, the mere fact that the Commission has entertained the concept of disparate interconnection and economic obligations for a subset of carriers identified by the access stimulation triggers furthers a misconception that access stimulation is unlawful. This traffic type, such as audio conferencing, **exists on all carriers' networks**. A carrier that specializes its business on serving the unique needs of certain customers should not be placed at a disadvantage in the marketplace.

C. The Commission Should Focus Its Efforts On Further Achieving The Goals Of The *USF/ICC Transformation Order*

Rather than unnecessarily reversing interconnection obligations and compensation flows for one, often difficult to identify, category of LEC, the Commission should focus its efforts on further achieving the longstanding rate unity goals of the *USF/ICC Transformation Order*.

1. Establish A 15-Mile Transport Rate Cap For Access Stimulators

The Commission should adopt a 15-mile transport rate cap for access stimulators. Doing so would simply and directly address the concerns at issue in this NPRM and eliminate any warrant for excessive restructuring at this late stage of the switched access compensation mechanism.

As the Audio Conferencing Access Rate Study illustrates, under the proposal herein to cap transport mileage under certain circumstances, relevant compensation flows for audio conferencing traffic are fundamentally the same across providers and LECs, regardless of carriers size or business focus, which should be the FCC's ultimate goal. This is a dramatic and important shift as under the NPRM's first prong, revenue flows are maintained for some providers of these services, while they are punitively *reversed* for others providing the same service.

Numerous parties identify high mileage in rural areas as the key issue driving remaining access stimulation activity. For example, AT&T acknowledges that the Commission's "2011 reforms ameliorated some marketplace abuses," but AT&T is experiencing traffic moving from one provider to another for the "sole purpose of billing high, per mile transport rates."[9] Inteliquent similarly emphasizes that "mileage pumping" is a great source of billing disputes, and they similarly suggest that capping transport miles would be a reasonable solution.[10]

Wide Voice agrees that the primary source of rate disparity exists with rural CEA transport. However, instead of addressing the mileage issue directly by limiting mileage-based billing in certain areas or for certain LECs, the NPRM doesn't even look at rates or attempt to identify ways to reduce rate disparities. Instead, the NPRM wrongly offers new sources of rate disparity, contradicting the goals of the *USF/ICC Transformation Order*. Adoption of a 15-mile transport cap for all access stimulators would service to unify rates.

Importantly, however, the targeted access stimulator LECs, upon closer inspection and with the mileage-limiting proposal described herein applied, are effectively indistinguishable from the same market's *non-targeted* participants when it comes to switched access charges. Indeed, the Audio Conferencing Rate Study makes plain that national rate parity largely exists already,

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9 AT&T Dec. 3, 2018 Ex Parte at 1.

10 Inteliquent Nov. 16, 2018 Ex Parte at 1 and 3.

and by capping to 15 miles transport for access stimulators, the Commission's parity goals would be achieved without the need of the complex and difficult to administer NPRM proposals.

2. Make Self-Help A 201(b) Violation

The Commission should put to an end to the practice of carriers engaging in self-help by refusing to pay properly filed tariff charges that they did not challenge through the Commission's processes. Although there have been recent court decisions declaring a carrier's act of withholding payment due under a lawfully filed tariff as unlawful self-help, the industry remains rife with this discriminatory and coercive conduct. Accordingly, the Commission should declare that refusing to pay properly filed and unchallenged tariffed access charges an unjust and unreasonable practice in violation of section 201(b) of the Communications Act.

The Commission has established a myriad of mechanisms for parties to challenge tariffs before they take effect. Many carriers, however, ignore those dispute processes and instead take matters into their own hands and simply refuse to pay lawfully tariffed access charges as a tactic to place a significant financial burden on smaller competitive carriers to collect the tariffed access charges they are due. Rather than follow the rules established by the Commission, the IXCs instead attack and attempt to vilify legitimate providers simply because they meet the Commission's definition of "access stimulator." Of course, the Commission has established very specific tariff and compensation rules for access stimulators, and the Commission should require the IXCs to follow these rules, not engage in contrived self-help.

In effect, this form of self-help has made the Commission's tariff filing and review process a nullity. By ignoring that process and by raising untimely disputes long after a tariff has taken effect, disputing IXCs are essentially able to undermine competition and pay a practical rate of $0.00 and play "keep away" through multi-year litigation proceedings. These unilateral and unsanctioned self-help efforts undermine the Commission's regulations, the tariffs process, and inevitably waste Commission and judicial resources associated with collection efforts arising under lawfully tariffed rates that are fully consistent with the Commission orders and regulations.

A Commission finding that a carrier's refusal to pay a properly filed tariffed rate while not filing a tariff complaint constitutes a section 201(b) violation would go a long way towards leveling the playing field and giving meaning to the tariff filing and dispute procedures set forth by the Commission Furthermore, this would also allow the process to continuously clarify regulatory uncertainties while not burdening the legal system and Commission resources. The time is now for the Commission to level the playing field regarding disputes. Any other result would only further encourage disorderly, anticompetitive and wasteful self-help efforts by carriers that elect not to follow the tariff dispute regime established by the Commission.

3. Affirm Again That Tandem Traffic Terminating To CLEC End Offices Is Subject to Standard, Non-Step-Down Rates

Despite the *USF/ICC Transformation Order* and the Commission's clear decision in *Level 3 v AT&T*, several carriers continue to use baseless claims regarding competitive LEC ("CLEC") benchmarking to justify self-help refusals to pay properly tariffed charges. These carriers, however, never challenge tariffs through the Commission's tariff dispute process.[11] If they did,

[11] In *Level 3 v. AT&T*, Level 3 went through the Commission's orderly process of challenging AT&T's tariff upon filing and eventually pursuing a formal complaint with the FCC. By contrast, AT&T does not challenge tariffs, apparently as a practice, and instead pursues self-help remedies.

these carriers would lose their disputes by Commission adjudication. Rather than follow those processes, these carriers instead lie in wait and dispute 100% of invoices based on contrived disputes not raised through proper channels.

To comply with the *USF/ICC Transformation Order* and subsequent clarifications, on multiple occasions, Wide Voice publicly filed very clear tariff language:

> 3.6.4 The terminating Tandem-Switched Transport rate schedules are bifurcated into "Standard" and "Affil PCL" rates. The Affil PCL terminating Tandem-Switched Transport rates[i] apply to terminating traffic traversing a Company Access Tandem switch when the terminating carrier is a Company-affiliated price cap carrier. All other terminating Tandem-Switched Transport traffic is subject to the Standard terminating Tandem-Switched Transport rates.[ii]
>
> [i] Affil PCL terminating Tandem-Switched Transport rates are benchmarked to the price cap LEC rates which are subject to the step down specified in Commission Rules 51.907(g)(2) and 51.907(g).
>
> [ii] Standard terminating Tandem-Switched Transport rates are benchmarked to the price cap LEC rates which are not subject to the step down specified in Commission Rules 51.907(g)(2) and 51.907(g).

No one challenged or otherwise raised any questions regarding Wide Voice's tariff when filed multiple times in accordance with the Commission's rules.

Long after Wide Voice's tariff obtained deemed lawful status, certain carriers began disputing Wide Voice's invoices on a similar basis. As one example, a recent dispute letter states that Wide Voice's tariff:

> [I]s not valid because it does not comply with the FCC's intercarrier compensation and benchmark rules (47 CFR 51.911, 69.26, et. al.). For traffic traversing Wide Voice's tandem and terminating to an end office of a Wide Voice affiliate with the service territory of a Price Cap ILEC, the FCC rules prescribe that CLEC tariff rate shall be no more than $.0007/MOU as of July 1, 2017 and shall be zero ("bill and keep") as of July 2, 2018."

This view is contradicted by both the *USF/ICC Transformation Order* and the clarification provided in the denial of Level 3's complaint, where Level 3 contested AT&T's ability to charge tandem switching elements for traffic destined to its affiliated CMRS, CLEC, and VoIP entities. There, the Commission stated:

> [W]e conclude that the $.0007 per minute rate in Section 51.907(g)(2) applies only to tandem switching and transport traffic that ***terminates to a price cap carrier end office***.[12]

* * *

[12] *Level 3 v. AT&T* at ¶11 (emphasis added).

> Specifically, we find that the rule applies ***only in situations where a "Price Cap Carrier" is "terminating traffic"*** and the price cap carrier (or its affiliate) also owns a tandem switch that the traffic traverses. ***The most reasonable reading of the rule, in context, is that the "terminating carrier" must be a price cap carrier.***[13]

Thus, there can be no doubt that the basis of the IXCs' disputes of Wide Voice's tariffs have been clearly rejected by the Commission.

Furthermore, the IXCs efforts to extend the benchmarking rules is also not consistent with the Commission's rules. These carriers are disregarding differences in the competitive providers' regulatory classification and adopting a self-serving, discriminatory new variant of benchmarking that preserves the ILECs' tandem and transport revenue but denies those revenues to similarly situated competitive providers. In fact, the beginning of the carrier disputes on this issue appears strategically timed to not interfere with their defense of their step 6 implementation in the Level 3 complaint. Only after the Level 3 complaint was addressed by the FCC in February did the carriers appear willing to push back on the CLECs' identical implementation of the step-down many months earlier – not because the FCC's *Level 3 v. AT&T* order supported such disputes with the CLECs, but because of the hypocrisy of simultaneously arguing "preserve for me but not for them."

In order to put this issue to rest once and for all, the Commission should re-affirm the findings in the *USF/ICC Transformation Order* and the more recent Level 3 complaint and state that, as is the case for AT&T, CLECs may lawfully charge standard, "non-step-down" terminating tandem/transport rates.

III. Conclusion

As set forth above, the Commission's benchmarking step down in combination with its access stimulation rules has greatly reduced rates and has eliminated rate disparities that existed at the time of the *USF/ICC Transformation Order's* adoption in 2011. To the extent further parity is desired, the Commission should cap at 15 miles transport charges for access stimulators, rather than create new interconnection and compensation obligations on just a subset of carriers. The Commission also should find that a carrier's self-help refusal to pay lawfully tariffed access charges constitutes an unjust and unreasonable practice in violation of section 201(b) of the Act. Finally, the Commission should re-affirm that traffic terminating to CLEC end offices is not subject to the price cap LEC transition, and instead that CLECs may lawfully charge standard, "non-step-down" rates.

Respectfully submitted,

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Andrew Nickerson
CEO

Attachment

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[13] *Id.* at ¶14 (emphasis added).

Attachment

Inteserra
CONSULTING GROUP

151 Southhall Lane, Ste 450
Maitland, FL 32751
P.O. Drawer 200
Winter Park, FL 32790-0200
www.inteserra.com

Audio Conferencing Access Rate Study

January 14, 2019

My name is Carey Roesel and I am Vice President and Consultant at Inteserra Consulting Group. I have been a Consultant at Inteserra since the early days of competition in telecommunications resulting from the 1996 Telecom Act. My initial perspective on regulatory matters was formed during my tenure with the ILEC now known as CenturyLink where I held various regulatory and business planning positions.

Much of my consulting time is spent guiding intercarrier agreements and resolving intercarrier compensation disputes. I have provided expert testimony in numerous telecom cases involving intercarrier compensation rates, rate structures, rate application, and tariff compliance. I have filed hundreds of switched access tariffs or access tariff revisions. I have advised dozens of CLECs on switched access rate development, tariff, and regulatory compliance issues. Inteserra produces publications that track ILEC switched access rates, regulator-imposed rate caps in every jurisdiction, and regulatory decisions regarding intercarrier compensation.

I have a Bachelor of Arts in Economics from the University of Florida and a Master of Arts in Applied Economics from the University of Central Florida.

Wide Voice, LLC, provided me with various audio conferencing destination numbers reflecting a variety of jurisdictions, conferencing providers, and switched access providers (both at the end office and tandem level). They asked that I analyze the intercarrier compensation flows for these routes and evaluate the overall effectiveness of the FCC's 2011 CAF Order in addressing the price signals driving "access stimulation." They also asked that I comment on additional changes that might be considered to address any remaining market distortions.

Access Stimulation – Problem Already Solved?

The 2011 CAF Order described access stimulation as occurring "*when a LEC with **high switched access rates** enters into an arrangement with a provider of high call volume operations such as chat lines, adult entertainment calls, and "free" conference calls. The arrangement inflates or stimulates the access minutes terminated to the LEC, and the LEC then shares a portion of the increased access revenues resulting from the increased demand with the "free" service provider, or offers some other benefit to the "free" service provider*."

In its 2018 NPRM on this issue, the FCC described what it was addressing in 2011 slightly differently (emphasis added) where *"Access stimulation (also known as traffic pumping) occurs when a local exchange carrier (LEC) with **relatively**-high switched access rates enters into an arrangement to terminate calls—**often in a remote area**—for an entity with a high call volume operation, such as a chat line, adult entertainment calls, and "free" conference calls, collectively high call volume services."*

It is debatable about how much additional audio conferencing demand (more precisely, quantity demanded) was *created* by the "free to the end user" pricing model. However, this pricing arrangement – relatively high prices to carriers and low (or zero) prices to end users -- had the obvious effect of drawing audio conferencing demand to the higher-priced LEC areas.

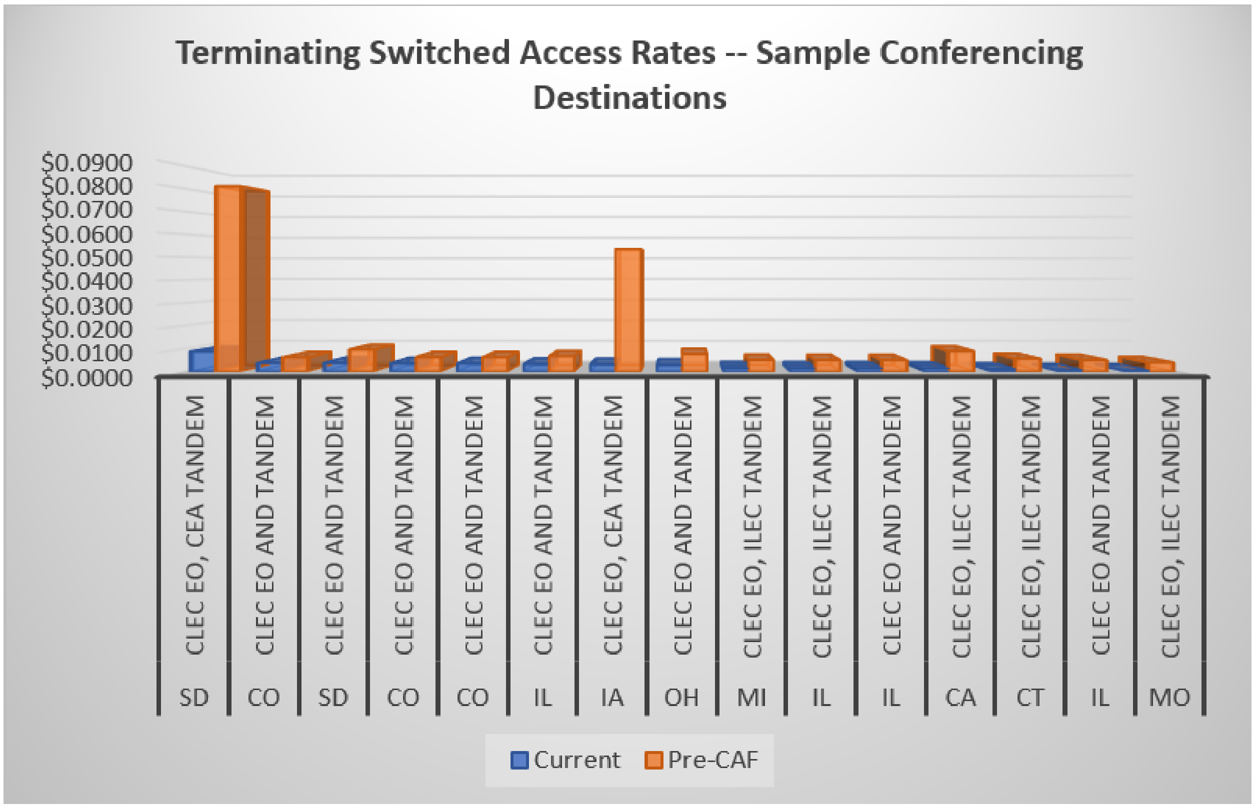
Not surprising, then, the proposed solution in 2011 addressed *pricing*. The FCC does not regulate end user fees for audio conferencing services – and would be very disinclined to mandate *higher* end user fees or some sort of end user price floor – so the CAF Order addressed the fees to carriers. It established a test for access stimulation which, if triggered, required a competitive LEC to *"benchmark its tariffed access rates to the rates of the price cap LEC with the lowest interstate switched access rates in the state, rather than to the rates of the BOC or the largest incumbent LEC in the state"*.

Additionally, the FCC identified that its series of annual terminating step reductions would *"work in tandem with the comprehensive intercarrier compensation reforms we adopt below, which will, when fully implemented, eliminate the incentives in the present system that give rise to access stimulation."* Eliminate LEC areas with relatively high termination rates and the distorted economic incentives are removed as well.

7 years later, however, the FCC's NPRM (FCC 18-68) indicated that its 2011 effort to address distorted economic incentives driving certain access stimulation behavior were not completely successful:

> *"To circumvent the Commission's rules, access-stimulating LECs have adjusted their practices, and now they support such services by interposing intermediate providers of switched access service not subject to the Commission's existing access stimulation rules in the call route, thereby increasing the access charges interexchange carriers (IXCs) must pay."*
>
> *The record indicates that today's access arbitrage schemes are often enabled by the use of intermediate access providers selected by the terminating LECs. When an intermediate access provider is in the call path, the IXC pays access charges on a per-minute-of use (MOU) basis to the intermediate access provider and to the terminating LEC. This tactic evades existing Commission rules intended to stop access stimulation to the extent that an intermediate access provider is not captured by the definition of "access stimulation," and thus, is not subject to those rules.*

But what does the intercarrier compensation pricing data show? I analyzed the intercarrier compensation payments[1] associated with terminating calls to a sample of various conference calling providers[2] and destinations. Some of the audio conferencing services are offered for free to the end user while others charge a fee. Some calls are routed via CLECs, some via ILECs, and some through a combination of the two. Below is a graphic depiction of pre-CAF and post-CAF (and after Step 7) intercarrier compensation per MOU rates. The clear target of the FCC's initial reforms – SD and IA destinations served by rural carriers and Centralized Equal Access (CEA) tandem providers – experienced reductions greater than 90% since the 2011 order. Again, these reductions were driven by both the access stimulation provision and the cumulative 7-year terminating rate step downs. The rate reductions in nonrural areas were driven solely by the 7-year step-downs, but were still substantial and ranged from 40% to 80%.

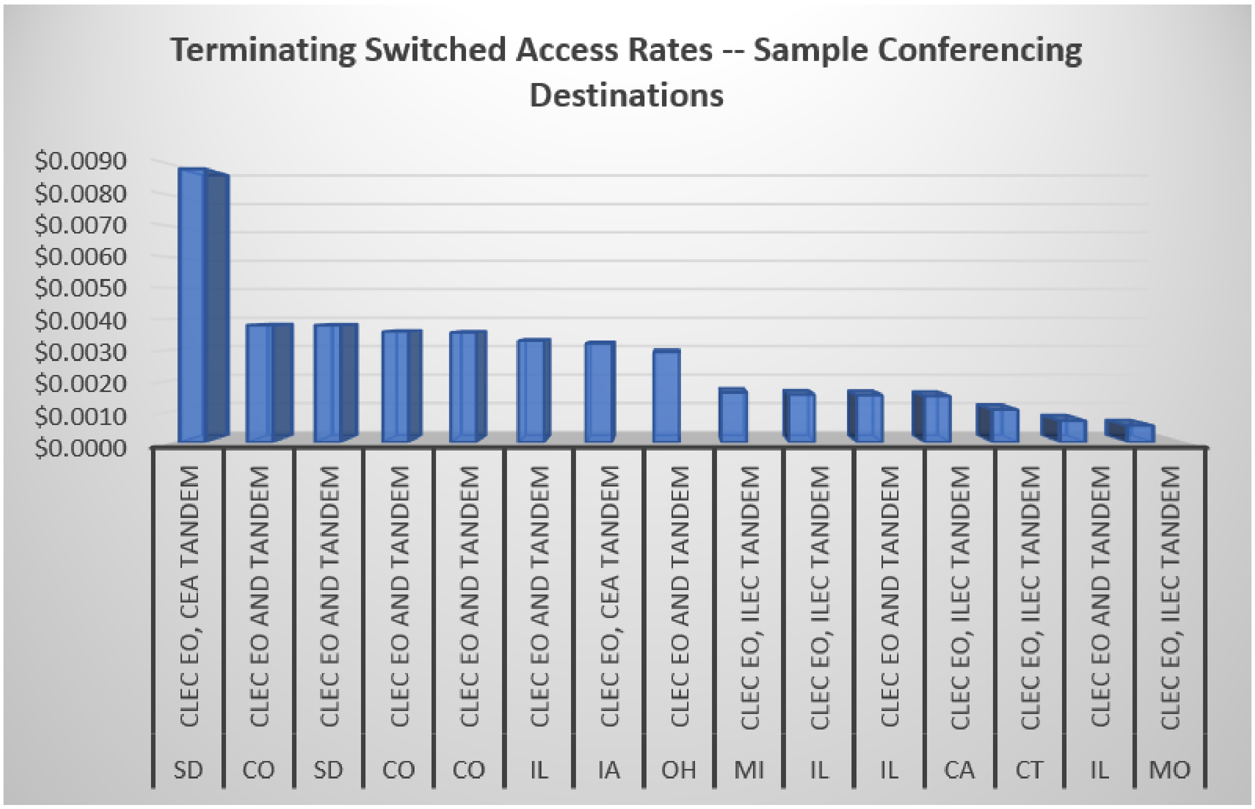


[1] Rate Assumptions:

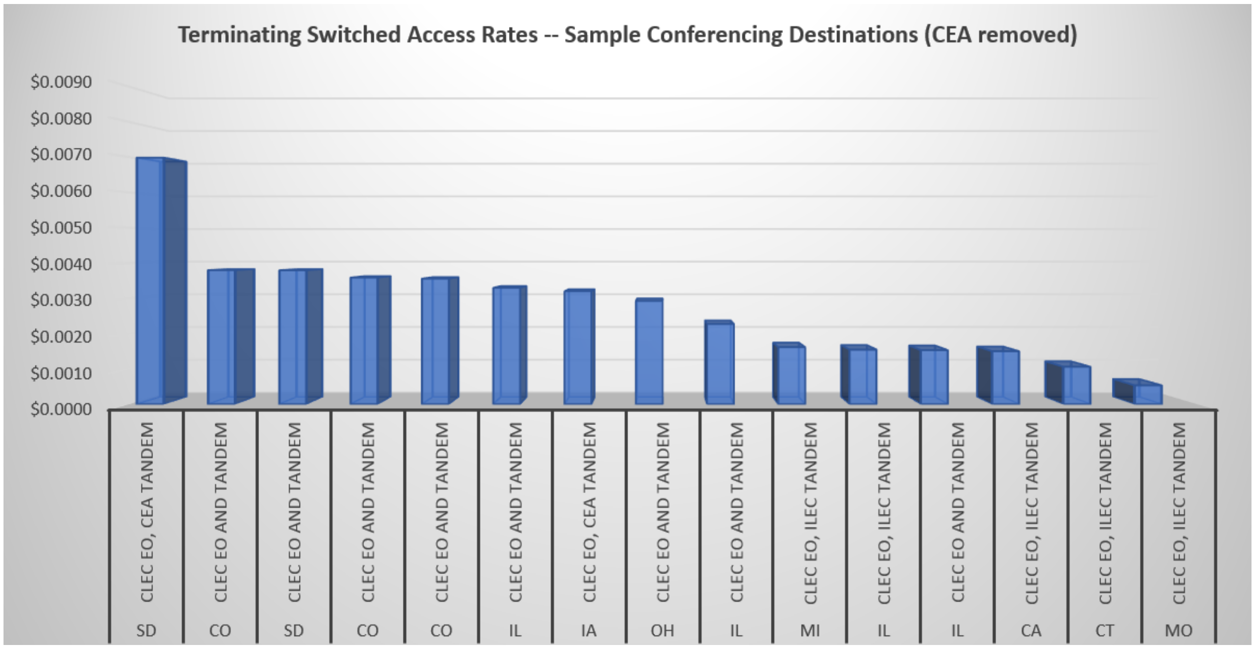
- Terminating elements = LS, Info Surcharge, CTP, TST-T, TST-F, TS, DTTP (per MOU equivalent)
- Assume CLECs benchmark to ILEC on a per element basis unless FCC tariff includes provisions otherwise
- 2011 rates assume relevant ILEC benchmark
- Current rates assume access stim triggers force benchmarking to the lowest priced price cap LEC in IA and SD

[2] Sampled providers include FreeConferenceCall, PGI, UberConference, Citrix/GoToMeeting, Verizon Conferencing, AT&T Conferencing, and Intercall

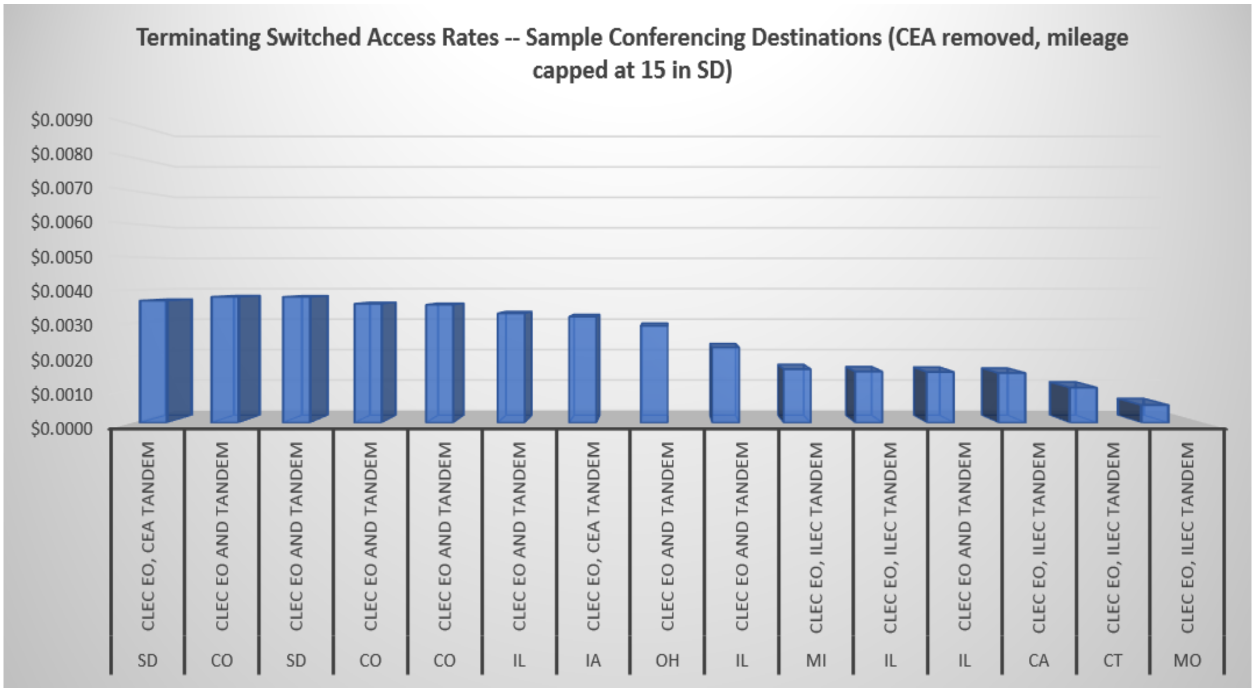
Removing the pre-CAF rates from the chart allows us to review current rate variations more effectively (but keep in mind the significant change in scale since the highest rate dropped by more than 90%). The remaining rate variations are driven by a CEA provider's rates in SD in combination with relatively high transport mileage. (It is worth noting that the IA CEA rate, had it not been recently reduced, would have driven the total rate in IA to a level comparable to the rate shown for SD.)



If we now remove the relatively high CEA rate from SD (and substitute CenturyLink/Qwest rates), the rate variation is reduced further:



Finally, if we cap the transport mileage in the rural states where it is offered in combination with a CEA provider (SD) at 15[3], we are left with the small, ordinary rate variation that exists between various RBOC serving areas reflected in these call destinations:



We can conclude that the CAF Order with its immediate access stimulation reductions and cumulative rate step-downs eliminated about **92%** of the average terminating rate *variation* on these routes (i.e., variation between relatively high-priced SD route and the average of the other routes). Neutralizing the relatively high SD CEA tandem rate would further this objective and, with the reforms above already accomplished, eliminate about **95%** of the rate variation. Finally, capping the transport mileage brings the total elimination to more than **98%**. Again, it was this rate variation among terminating call destinations that was the heart of the FCC's policy concerns when it came to access stimulation.

Given the FCC's stated goal of eliminating distorted price signals in this particular market, we can say the CAF Order (combined with the recent CEA Order in IA) was inarguably successful. Taking it incrementally further by addressing the SD CEA issue and capping transport mileage effectively erases the remaining distortions altogether. With such low rates (both in absolute terms and in terms of rate variation) across a variety of providers and jurisdictions, it is unclear where a problem remains. Once compensation becomes nearly uniform and fee-based audio conferencing generates the same intercarrier compensation flows as "free" audio conferencing, where is the distortion?

Carey Roesel
Consultant to Wide Voice, LLC

[3] This chart retains the order of the route presentation from earlier charts to simplify comparisons. Earlier charts sorted the routes from high to low post-Step 7.